Supreme Court, U. S.
FILED
APR 21 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1979

No. 79-6108

EMMA ARMOUR, *et al.*,

Appellants,

v.

JACK P. NIX, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

MOTION TO AFFIRM BY FULTON AND DEKALB COUNTY BOARDS OF EDUCATION

JAMES P. GROTON
ALFRED A. LINDSETH
3100 First National Bank Tower
Atlanta, Georgia 30303
Attorneys for Appellee
Fulton County Board of Education

GARY M. SAMS
CHARLES L. WEATHERLY
450 West Court Square
Decatur, Georgia 30030
Attorneys for Appellee
DeKalb County Board of Education

INDEX

	Page
Table of Authorities	ii
Motion to Affirm	1
Statement	2
1. Introduction	2
2. Proceedings Below	4
3. Facts Relevant to Issues Presented	5
Argument	14
I. The Supreme Court has Jurisdiction Over this Direct Appeal from the Judgment of a Three-Judge District Court	14
II. The Decision and Judgment of the Three-Judge District Court is Clearly Correct and Should be Affirmed without Further Argument	15
A. The district court's dismissal of this action was clearly correct because Appellants have not shown that any of their constitutional rights have been violated	16
B. Even assuming Appellants or their children have a constitutional right to attend racially balanced schools, the district court's findings of fact and conclusions of law that Appellants have failed to show any constitutional violations of an interdistrict nature which would require an interdistrict remedy are supported by ample evidence and are clearly correct	21
Conclusion	35

TABLE OF AUTHORITIES

Page

Cases:

Bradley v. School Board of the City of Richmond, Virginia, 462 F.2d 1058 (4th Cir. 1972), *aff'd by an equally divided Court*, 412 U.S. 92 (1973) 19

Brown v. Board of Education, 347 U.S. 483 (1954) ...21, 24

Brunson v. Board of Trustees of School District No. 1 of Clarendon County, South Carolina, 429 F.2d 820 (4th Cir. 1970) 18

Calhoun v. Cook, 522 F.2d 717 (5th Cir. 1975) 21, 30

Columbus Board of Education v. Penick, 47 U.S.L.W. 4924 15

Crow v. Brown, 332 F.Supp. 382 (N.D. Ga. 1971), *aff'd*, 457 F.2d 788 (5th Cir. 1972) 11, 12, 28, 29

Evans v. Buchanan, 393 F.Supp. 428 (D. Del.), *aff'd*, 423 U.S. 963 (1975) 19

Hightower v. West, Civil Action No. 12,880, U.S. District Court for the Northern District of Georgia (April 19, 1970) 5

Milliken v. Bradley, 418 U.S. 717 (1974) 2, 3, 16-20, 22-26

Newburg Area Council, Inc. v. Board of Education of Jefferson County, Kentucky, 510 F.2d 1358 (6th Cir. 1974), *cert. denied*, 421 U.S. 931 (1975) ... 19

Spencer v. Kugler, 326 F.Supp. 1235 (D. N.J. 1971), *aff'd*, 404 U.S. 1027 (1972) 20

United States v. Board of School Commissioners of the City of Indianapolis, Indiana, 503 F.2d 68 (7th Cir. 1974), *cert. denied*, 421 U.S. 929 (1975) 19

Statute:

28 U.S.C. § 2281 2

Other Authority:

Federal Rules of Civil Procedure, Rule 52 15

IN THE

Supreme Court of the United States

October Term, 1979

No. 79-6108

EMMA ARMOUR, *et al.*,

Appellants,

v.

JACK P. NIX, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

MOTION TO AFFIRM

Appellees Fulton County Board of Education ("Fulton Board") and DeKalb County Board of Education ("DeKalb Board"), pursuant to Rule 16 of the Rules of the Supreme Court of the United States, move that the final judgment dated September 24, 1979, of the three-judge District Court dismissing the above action be affirmed on the grounds that the decision of the court below is clearly correct and does not need further argument.

STATEMENT

1. Introduction.

This is a direct appeal from the final judgment and decree entered on September 24, 1979, by a district court of three judges specially constituted pursuant to 28 U.S.C. § 2281 (the "district court") dismissing Appellants' complaint. Appellants brought this lawsuit in 1972 against the Georgia State Board of Education and six county and four city boards of education seeking a court order consolidating the school systems in the six-county Atlanta metropolitan area into one "superdistrict" covering approximately 1,925 square miles and containing over 300,000 students. In 1975, Appellants amended their complaint to delete their demand for consolidation, and substituted a demand for relief which, in effect, would accomplish a similar result by assigning students to schools over a six-county area without regard to county, city or school district boundary lines.

Relying on *Milliken v. Bradley*, 418 U.S. 717 (1974), Appellants contend that government officials have committed constitutional violations of an interdistrict nature which have caused a substantial disparity between the racial composition of Atlanta and the other Appellee school districts in this case. Appellants contend that these alleged violations justify the imposition of a metropolitan-wide school remedy without regard to existing county, city or school district lines. Appellants' primary contention is that government action in the distant past, from the 1920's to the mid-1950's, caused segregated housing patterns in the Atlanta metropolitan area which in turn led to the current racial imbalances in the schools. However, in 1958 the racial composition of the Atlanta school system was almost exactly the same as the racial com-

position of the Fulton and DeKalb County school systems today, approximately 30% black. Today, the Atlanta School System is approximately 89% black. Consequently, the racial imbalance which Appellants complain of occurred primarily during the 1960's and 1970's when even Appellants acknowledge that any governmental discrimination had for the most part ceased.

Appellees contend that neither Appellants nor their children have suffered any constitutional deprivation because they not only attend school in a unitary system, *i.e.*, Atlanta, but in the wealthiest school system in the State of Georgia. Therefore, there is no need for even an intradistrict remedy, much less the massive metropolitan remedy which the Appellants seek. Since this Court has made it clear that there is no requirement that schools be racially balanced, Appellees contend that the dismissal of this action was clearly correct.

Besides not showing that any of their constitutional rights have been violated, Appellants have not shown any violations having the requisite interdistrict impact under the holding of *Milliken, supra.* The district court found that the discriminatory acts shown by Appellants were either of a *de minimis* nature, or were purely intradistrict in impact (most of them took place in the City of Atlanta), or happened so long ago that whatever original impact they may have had no longer persists.

The other Appellee Boards of Education have also filed Motions to Affirm, and we refer the Court to those Motions and accompanying briefs for an overview of the entire case. This brief will focus primarily on the district court's dismissal of the case against the Fulton and DeKalb County school systems.

2. **Proceedings Below.**

After completion of discovery, the liability phase of this case was tried before the district court in late 1977 and early 1978. Following the presentation of Appellants' evidence, seven of the Appellee school boards filed Motions to Dismiss. By order dated March 2, 1978, the district court granted these Motions and dismissed the action against these seven school boards.[1]

Appellees Fulton Board, DeKalb Board, City of Atlanta Board of Education and State Board of Education of Georgia elected not to file Motions to Dismiss, and presented their evidence before the district court in March, 1978. Following final arguments, the district court, by Order and Judgment dated September 24, 1979 ("the September Order"), also dismissed the action against the Fulton, Atlanta, DeKalb and State Boards, and entered Findings of Fact and Conclusions of Law.

On October 22, 1979, Appellants filed their Notice of Appeal in the United States Supreme Court and simultaneously filed a "protective" Notice of Appeal in the United States Court of Appeals for the Fifth Circuit in the event it was subsequently decided this case should have been tried by a single district court judge rather than a three-judge court. Following several unsuccessful attempts by the Appellants to have the appeal heard in the first instance by the Fifth Circuit Court of Appeals, the Fifth Circuit stayed all proceedings before it pending a decision by this Court.

---

[1] Cobb County, Gwinnett County, Douglas County and Clayton County Boards of Education, and the Boards of Education of the Cities of Marietta, Decatur and Buford. Appellants have appealed the dismissal of the case against all of these school boards, except for the City of Buford.

On February 19, 1980, Appellants filed their Jurisdictional Statement in this Court, taking the unusual position that this Court *does not* have jurisdiction over their appeal. Appellees, on the other hand, contend that this Court does have jurisdiction over this appeal, and should affirm the Judgment of the district court on the grounds that it is clearly correct and there is no need for further argument.

3. Facts Relevant to Issues Presented.

A. The Parties.

(1) **Appellants.** Appellants are black parents with school age children attending schools in the City of Atlanta school system. None of Appellants have children attending school in the Fulton County or DeKalb County school systems.

(2) **Fulton Board.** Appellee Fulton Board is the public body within Fulton County responsible for the elementary and secondary education of all children living within the County but outside the City of Atlanta.

As of the beginning of the 1977-1978 school year, the Fulton County school system had 35,664 students attending its 77 schools, of which approximately 7,681 (21.53%) of the students were black and 27,983 (78.47%) were white. *See* 1977 Annual Report to Court in *Hightower v. West*, Civil Action No. 12,880, U. S. District Court for the Northern District of Georgia (April 19, 1970). As of the beginning of the 1979-80 school year, approximately 29% of the students of the school system were black. *See* 1979 Annual Report to Court in *Hightower v. West, supra.* By comparison, the percentage of black students in the public schools of the six-county metropolitan area in 1977 was approximately 32%.

The Fulton County school system lies wholly within

Fulton County. As of 1977, Fulton County, not including the City of Atlanta, had a population of 194,100, of which there were 26,100 black residents (13%) and 168,000 white residents (87%). Defendants' Exhibit Expert 17. During the 1970's, the black population of Fulton County outside Atlanta increased by over 100%, from 12,696 in 1970 to 26,100 in 1977. Defendants' Exhibit Expert 17.

Except for the City of Atlanta, the Fulton County school system boundaries coincide with the Fulton County boundary lines. The only changes in the school district boundary lines have been the result of several annexations of territory by the City of Atlanta. None of these boundary line changes were segregative in either purpose or effect, as found by the district court. September Order, p. 7.

(3) **DeKalb Board.** The DeKalb County Board of Education is the political body responsible for the education of children within the boundaries of DeKalb County, except for those children within the County attending the school systems of the Cities of Atlanta or Decatur. The DeKalb County school system, the second largest in the State of Georgia, had an enrollment for the 1977-1978 school year, the year of the trial of this case, of 85,951 students, of which 20,849 were black (24.25%) and 65,102 were white (75.25%). DeKalb County Answers to Plaintiffs' Interrogatories.[2]

DeKalb County is one of the largest counties in the State of Georgia. In 1977, its population was 427,800, of which 53,300 or 12% were black residents. Defendants' Exhibit Expert 13. The school district lines, with an area

[2] Although not a part of the record in this matter, it is interesting to note that the DeKalb school system was 25.45 percent black for the 1978-1979 school year and 28.88 percent black for the 1979-1980 school year.

of some 257 square miles, are coterminous with those of DeKalb County, except for the Cities of Atlanta and Decatur which have their own school systems. The only change in the school district lines, or for that matter, the boundary lines of DeKalb County, occurred in 1969, and involved a *de minimus* number of students. Hinson dep., p. 26. On the issue of boundary line changes, the district court expressly found that there had been no boundary line changes in either the DeKalb or Fulton County school systems for racially discriminatory purposes. September Order, p. 7.

During the decade of the 1970's, the DeKalb school system experienced a significant growth in its black population, as is graphically depicted by Defendants' Exhibit Expert 25 which reflects dramatic increases in the black population of the DeKalb County schools from the 1969-1970 school year to the 1977-1978 school year.

B. **School Evidence.**

The district court found that "The defendant school systems remaining in this case [Fulton, DeKalb and Atlanta] are either unitary or are operating under a court-imposed desegregation plan." September Order, p. 6. The district court made the following findings of fact as to each school system:

> 1. **Atlanta.** "The City of Atlanta school system was held by this court to be unitary on May 1, 1974, 'for the fourth time in as many years.' This court's adjudication of the Atlanta school case was affirmed by the United States Court of Appeals for the Fifth Circuit in *Calhoun v. Cook*, 522 F.2d 717 (5th Cir. 1975)." September Order, p. 6.
>
> 2. **DeKalb.** "DeKalb County desegregated its schools pursuant to this court's order of June 12,

1969, in *Pitts v. Cherry*, Civil Action No. 11946 (N.D. Ga. 1969)." September Order, p. 6.

3. **Fulton.** "Fulton County completed desegregation of its school system in 1970 pursuant to this court's order in *Hightower v. West*. The final desegregation order in *Hightower v. West* was affirmed by the Fifth Circuit Court of Appeals at 430 F.2d 552 (5th Cir. 1970)." September Order, p. 6.

Based on its findings of fact, the district court concluded:

"The court has found that the defendant schoo[1] systems remaining in this case [Atlanta, DeKalb, Fulton] have either been declared unitary or are presently operating under final desegregation orders of this court. Once a system is declared unitary, it would stand to reason that the past history of segregation in that system would no longer be relevant to an inquiry into the existence of present-day constitutional violations. Furthermore, plaintiffs have shown no intent to discriminate on the part of any school official of any defendant school system during the years since they were declared unitary or have been operating under court-ordered plans. The court, therefore, finds that there have been no constitutional violations by school officials of the defendant school systems which would justify the imposition of the interdistrict remedy sought by the plaintiffs." September Order, pp. 26-27.

C. **Housing Evidence.**

The district court found as a matter of fact that none of the Appellee school boards had committed any constitutional violations. It then turned its attention to Appellants' contention that the actions of other state and local governmental officials had caused racially segregated housing patterns which in turn led to racially segregated schools in the six-county Atlanta metropolitan

area, and concluded:

> "The court has considered the housing evidence presented and has found no other [reference to *Crow v. Brown* discussed on pp. 11-12 below] housing violations since the defendants have been either declared unitary or have been operating under a court-imposed desegregation plan. The court concludes that whatever effect past housing violations have had upon the schools is too attenuated to constitute the type violation which would justify imposition of an interdistrict remedy." September Order, p. 32.

The district court also rejected Appellants' contention that segregated housing patterns which may have been influenced by the actions of government officials in the past persist today because of governmental action. Instead, the district court found:

> "To the extent that racial patterns persist, they are currently in existence because of personal preference and economic constraints." September Order, p. 33.

The district court emphatically rejected Appellants' contention that concentration of the black population within the City of Atlanta, rather than in the outlying counties, was the result of governmental action. From 1950 to 1977, the black population of the City of Atlanta more than doubled, from 121,416 to 256,470. Defendants' Exhibit Expert 13. As to whether or not this rapid growth was significantly caused by governmental action, the district court found:

> "Compelling evidence leads the court to conclude that *the rapid increase in black population in Atlanta was not, significantly, the result of any governmental action by any of the defendants.* Indeed, *in those days* [referring to the 1940's and 1950's], the initial reaction of Atlanta's government, restricting blacks to certain inadequate areas, tended to discourage the influx.

> Repeated attempts to erect actual or symbolic 'barriers' to the expansion of black residents in the Atlanta district have been shown (Sec. III, 3). The fact that Atlanta's black population increased *was not the result of governmental design* but, as the evidence shows, in spite of such governmental designs as were then implemented." (Emphasis added) September Order, pp. 21-22.

With regard to specific acts of governmental discrimination shown by Appellants, the evidence was that these took place almost entirely within the City of Atlanta with no impact on either Fulton or DeKalb Counties, and therefore of no relevance in this interdistrict case.[3]

For example, Appellants' evidence included a 1924 ordinance of the City of Atlanta containing racial occupancy designations and a 1931 ordinance of the City of Atlanta prohibiting a racial change in housing units. September Order, pp. 10-11. Similarly, Appellants introduced evidence showing that the governmental officials of the City of Atlanta utilized zoning laws to require buffers between black and white residential areas in the City, such as industrial parks, green zones and a public housing project. In addition, various committees and commissions were formed in the 1940's and early 1950's for the purposes of dealing with the expanding black population within the City of Atlanta. However, the district court found that these various barriers and buffers had no effect. September Order, p. 22. As to the various committees and associations organized to influence residential choices, the district court found that "[t]hey, too, appear to have failed." September Order, p. 22. Even Q. V. Williamson, a

[3] The district court's reference to Appellants' evidence as "truly staggering" referred to the quantity of documentary evidence introduced by Appellants. Its quality and credibility was another story, as recognized by the district court.

lifelong real estate agent and developer in Atlanta who was Appellants' housing expert most familiar with the City of Atlanta, testified that such attempts by Atlanta's governmental officials had been abject failures. Q. V. Williamson dep., pp. 88-89. Finally, these governmental actions had ended by 1966, as testified to by Mr. Williamson. Q. V. Williamson dep., p. 90. In summary, such actions had only a temporary effect in the City and none in the surrounding counties.

Moreover, the district court expressly found that neither the City of Atlanta nor the outlying counties had undertaken to keep blacks in Atlanta and out of the surrounding counties:

> "While, as noted above (Sec. III), there is evidence of historical governmental activity which tended to separate residents on a racial basis *within the City of Atlanta,* plaintiffs offered no evidence found convincing by the court that the City of Atlanta cooperated by agreement, concert of action, or other tacit or express undertaking with any other district, the object of which was to increase the black population within the Atlanta district and hold it down in any other district(s)." (Emphasis added) September Order, p. 21.

With regard to alleged efforts by governmental officials in either Fulton or DeKalb County to discourage black growth in those counties, the only violation deemed at all significant by the district court was based on the events in *Crow v. Brown,* 332 F.Supp. 382 (N.D. Ga. 1971), *aff'd,* 457 F.2d 788 (5th Cir. 1972) in which a district court judge held that the Fulton County Commissioners had unconstitutionally denied building permits for two low-income public housing projects in unincorporated Fulton County. However, after considering the evidence, the

district court in this case found that whatever initial impact this violation might have had on housing patterns between Fulton County and Atlanta no longer persists and has been corrected. September Order, p. 31.

With regard to the reason why little conventional public housing had been constructed by Housing Authorities outside the City of Atlanta since the decision in *Crow v. Brown, supra,* the district court found that "from 1973 to 1978 there was a moratorium on release of federal funds for the construction of conventional low cost housing." September Order, p. 17.

Finally, Appellants' contention that blacks have been discouraged from living in either Fulton or DeKalb County is refuted by undisputed demographic evidence which shows that from 1960 to 1977, the black population of both DeKalb and Fulton Counties (not including Atlanta) increased by approximately 100%, from 12,696 to 26,100 in Fulton County, and from 27,775 to 53,300 in DeKalb County. Defendants' Exhibit Expert 13. During the same 17-year period, the black population of the City of Atlanta increased by only 47%. Defendants' Exhibit Expert 15.

Both Appellants and Appellees introduced extensive expert testimony on the issue of what caused the current segregated housing patterns in metropolitan Atlanta. Appellants' expert, Dr. Karl Taeuber, testified that governmental discrimination had been the significant determinant of segregated housing patterns, and that the impact of other factors, such as personal preference and economics, was minor. Appellees presented testimony from three experts on the housing issue: Dr. William Clark, a geographer, Dr. Anthony Pascal, an urban economist, and Dr. David Armor, an expert in interpreting

public opinion polls. These three experts testified that economics, personal preferences, job locations, geographic features and social contacts were the primary causes of segregated housing patterns, and that the role of governmental action in causing these patterns was minor. Pascal testimony, p. 36, Armor testimony, p. 33, Clark testimony, p. 42.

In considering the expert testimony, the district court expressly rejected the testimony of Appellants' expert, Dr. Taeuber, that governmental discrimination was the primary cause of residential segregation, and instead found:

> "Of the factors which influence housing decisions, economic restraints and personal preference appear to be the strongest." September Order, p. 19.

The district court was especially persuaded by the testimony of Dr. David Armor, one of Appellees' expert witnesses, who graphically demonstrated the tremendous impact of personal choice of both blacks and whites on the formation of segregated housing patterns. The district court found:

> "The court was impressed by defendants' expert testimony as to the role of personal preference in housing decisions." September Order, p. 19.

In explaining why so few truly integrated neighborhoods exist in Atlanta, as well as other major urban areas, the district court was persuaded by Dr. Armor's testimony regarding the "tipping point" phenomenon which has the effect of creating transitional, rather than stable integrated neighborhoods. The district court found:

> "The court finds that there is evidence that the so-called 'tipping phenomenon,' which involves elements of fear, personal prejudice, and other

psychological and economic factors, may partly explain the evolution of transitional neighborhoods from totally white to almost totally black composition, leaving few integrated neighborhoods existing in the Atlanta area today. The court finds convincing the evidence that there is a point at which the presence of certain numbers of persons of another race which will cause one to feel uncomfortable about residing in the neighborhood. The court also finds convincing the evidence that the 'tipping point' may differ for whites and blacks." September Order, p. 20.

Taking all this evidence into account, the district court concluded:

> "*Governmental action has, thus far, failed to limit or broaden the area into which people have moved.* The evidence shows that when the factors that influence choice of residence (economic, personal preference, etc.) have so indicated, people will move into any part of metropolitan Atlanta they desire. *In the absence of such factors, neither obstruction nor encouragement by government seems to achieve significant results.*" (Emphasis added) September Order, p. 22.

ARGUMENT

I. THE SUPREME COURT HAS JURISDICTION OVER THIS DIRECT APPEAL FROM THE JUDGMENT OF A THREE-JUDGE DISTRICT COURT.

This issue is fully briefed in the Motion to Affirm and Brief filed by Appellee State Board. We incorporate the State Board's Brief, and refer the Court to it for a full discussion of the facts and authorities relevant to this issue.

II. THE DECISION AND JUDGMENT OF THE THREE-JUDGE DISTRICT COURT IS CLEARLY CORRECT AND SHOULD BE AFFIRMED WITHOUT FURTHER ARGUMENT.

In dismissing this action, the district court concluded:

> "Plaintiffs have failed to show any constitutional violation by the State of Georgia or any of its subdivisions, including defendant school boards, which has had an interdistrict effect, so that the court would be justified in imposing an interdistrict remedy." September Order, p. 33.

The findings of fact made by the trial court should not be disregarded unless they are clearly erroneous. Rule 52, Federal Rules of Civil Procedure. This is especially true in a school desegregation case where a trial judge must decide whether a constitutional violation, even if it has occurred, is significant enough to justify any remedy. As stated by Justice Stewart in *Columbus Board of Education v. Penick*, 47 U.S.L.W. 4924, 4929 (1979):

> "Similarily intricate may be factual inquiries *into the breadth of any constitutional violation and hence of any permissible remedy.* [Citations omitted]. Those tasks are difficult enough for a trial judge. The coldness and impersonality of a printed record, containing the only evidence available to an appellate court in any case, can hardly make the answers any clearer. I doubt neither the diligence nor the perserverance of the judges of the Courts of Appeals, or of my Brethren, but I suspect that it is impossible for a reviewing court factually to know a case from a 6,600 page printed record as well as the trial judge knew it. In assessing the facts in lawsuits like these, therefore, *I think appellate courts should accept even more readily than in most cases the factual findings of the courts of first instance.*" (Emphasis added).

A. The district court's dismissal of this action was clearly correct because Appellants have not shown that any of their constitutional rights have been violated.

This is an interdistrict or "metropolitan" school desegregation case. Appellants do not seek to desegregate the individual county and city school systems in this case. That has already been accomplished. As found by the district court, each of the Appellee school systems has either been declared unitary or is operating under a court or HEW-approved desegregation plan. September Order, p. 6.

Rather, Appellants argue that because the student population of the City of Atlanta school system is approximately 89% black, as compared to approximately 29% black in the Fulton and DeKalb County school systems (as of 1979-1980 school year), the courts should require the "busing" of students across county and city lines to achieve a more balanced racial mix in the school systems of the metropolitan Atlanta area.

In support of their request for racial balance, Appellants contend that governmental officials have committed constitutional violations having an interdistrict effect, but never address the constitutional deprivation suffered by their own children which an interdistrict remedy is supposed to cure. Thus, in their Jurisdictional Statement, Appellants allege they have established the types of constitutional violations which this Court in *Milliken v. Bradley*, 418 U.S. 717 (1974), involving the City of Detroit, indicated *might* serve as a basis for interdistrict relief without any consideration of the context in which this Court decided the *Milliken* case. *Milliken* was not decided in a vacuum. The Court had before it compelling reasons for an interdistrict remedy *which are totally*

absent in this case. First, in *Milliken,* the evidence showed that black students were receiving an inferior education in the poor inner-city schools of Detroit, while the white children were being educated in wealthy suburban schools. 418 U.S. at 759-761, notes 10-12 (dissenting opinion of Justice Douglas). This is definitely not the situation in this case, as found by the district court:

> "Atlanta, which has the highest percentage of black students of any school system involved in this case, *is also the wealthiest system,* with the greatest expenditure per pupil." (Emphasis added) September Order, p. 6.

In order to accept Appellants' argument, one must adopt the proposition that given equal or, in this case, superior educational resources, black children cannot learn unless white children attend class with them. In a scathing concurring opinion, Judge Sobeloff of the Fourth Circuit Court of Appeals recognized this as a fundamentally racist view:

> "The invidious nature of the Pettigrew thesis, advanced by the dissent in the present case, thus emerges. Its central proposition is that the value of a school depends on the characteristics of a majority of its students and superiority is related to whiteness, inferiority to blackness. Although the theory is couched in terms of 'socio-economic class' and the necessity for the creation of a 'middle-class milieu,' nevertheless, at bottom, it rests on the generalization that, educationally speaking, white pupils are somehow better or more desirable than black pupils. This premise leads to the next proposition, that association with white pupils helps the blacks and so long as whites predominate does not harm the white children. But once the number of white approaches minority, then association with the inferior black children hurts the whites and, because there are not

enough of the superior whites to go around, does not appreciably help the blacks.

> "This idea, then, is no more than a resurrection of the axiom of black inferiority as justification for separation of the races, and no less than a return to the spirit of *Dred Scott*. Were a court to adopt the Pettigrew rationale it would do explicitly what compulsory segregation laws did implicitly." *Brunson v. Board of Trustees of School District No. 1 of Clarendon County, South Carolina*, 429 F.2d 820, 826 (4th Cir. 1970).

Dr. Benjamin Mays, one of the most respected black educators in the Country and the President of the Atlanta School Board since 1970, also rejected Appellants' proposition that black children cannot receive a quality education in a predominantly black school system. March 21, 1978 Trial Transcript, pp. 12-15.

Second, in *Milliken*, there were 86 separate school districts in the three-county Detroit metropolitan area giving rise to tremendous disparities of wealth, socioeconomic background and racial makeup from school district to school district. Again the situation is totally different in this case where there are only ten school districts in the entire six-county Atlanta metropolitan area. In this case, there are no separate school districts for rich white neighborhoods and poor black neighborhoods, as there were in Detroit. School districts are large, based on long established county or city boundaries, not neighborhoods, and people of all backgrounds and socioeconomic classes live within each district. Thus, the City of Atlanta school district contains some of the most expensive neighborhoods in the metropolitan area, as well as some of the poorest. Defendants' Maps 1-10. Through the majority to minority voluntary busing program, chil-

dren from the poorest neighborhoods attend schools with children from the richest neighborhoods, and vice versa. This was *not* the case in Detroit where the rich white neighborhood had its own separate school district and the only way the poor black child in the adjoining poor black neighborhood, a separate school district, could attend the educationally superior school in the white neighborhood was by *cross-district* busing.

Finally, in Detroit, as well as every case in which an interdistrict remedy has been ordered, there has been a strong necessity of court intervention to insure desegregation of the central city school district, quite aside from any question of interdistrict relief.[4] The court in those cases was faced with having to impose a school desegregation plan *in any event* to remedy *intradistrict* violations regardless of the issue of interdistrict relief. For example, in *Milliken*, it was only after the district court concluded that the Detroit city school system was violating the Constitution that it decided to consider whether interdistrict relief might be appropriate. 418 U.S. at 744-745.

Again, this case is quite different. The district court has found that each of the Appellee school systems is either unitary or is already operating under a court or HEW-approved desegregation plan. Unlike the metropolitan school cases in Detroit, Louisville, Wilmington

---

[4] *Evans v. Buchanan*, 393 F.Supp. 428, 430 (D. Del.), *aff'd*, 423 U.S. 963 (1975) (Wilmington, Delaware); *Newburg Area Council, Inc. v. Board of Education of Jefferson County, Kentucky*, 510 F.2d 1358, 1359 (6th Cir. 1974), *cert. denied*, 421 U.S. 931 (1975) (Louisville, Kentucky); *United States v. Board of School Commissioners of the City of Indianapolis, Indiana*, 503 F.2d 68, 79 (7th Cir. 1974), *cert. denied*, 421 U.S. 929 (1975). *See also Bradley v. School Board of the City of Richmond, Virginia*, 462 F.2d 1058, 1061 (4th Cir. 1972), *aff'd by an equally divided Court*, 412 U.S. 92 (1973) (Interdistrict relief denied).

and Indianapolis, where the central school systems were *not* operating in a unitary manner, the Atlanta school system is unitary, as are the school systems of other Appellees. Consequently, there is no reason for any new desegregation plans in any of the Appellee school districts. The Appellants and their children, who reside in Atlanta, attend school in a unitary school system. Therefore, they are not being deprived of any of their constitutional rights. This Court has made it absolutely clear that the extent of a child's constitutional rights is to attend a unitary school system in the district in which he resides. *Milliken v. Bradley*, 418 U.S. 717, 746 (1974); *Spencer v. Kugler*, 326 F.Supp. 1235, 1240-41 (D. N.J. 1971), *aff'd*, 404 U.S. 1027 (1972). As this Court put it in *Milliken:*

> "The constitutional right of the Negro respondents residing in Detroit is to attend a unitary school system in that district." 418 U.S. at 746.

Ignoring this basic shortcoming of their case, Appellants contend that an interdistrict remedy should be imposed anyway. In view of the wealth of the Atlanta school district, the sole basis for an interdistrict remedy in this case would be to racially balance the schools of the Atlanta metropolitan area. However, this Court has repeatedly held that there is no constitutional requirement that schools be racially balanced. In *Milliken v. Bradley, supra*, Chief Justice Burger reiterated this well-settled constitutional principle:

> " 'If we were to read the holding of the District Court to require, as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse.' 402 U.S. at 24.
>
> The clear import of this language from *Swann* is that desegregation, in the sense of dismantling a dual

> school system, does not require any particular racial balance in each 'school, grade or classroom.' " 418 U.S. at pp. 740-741.

For fifteen years following this Court's decision in *Brown v. Board of Education*, 347 U.S. 483 (1954), Atlanta schools were in a state of turmoil. In 1958, the schools were 70% white. *See Calhoun v. Cook*, 522 F.2d 717, 718 (5th Cir. 1975). By the 1977-1978 school year, substantially all of the whites had fled the Atlanta public schools (but not the City), and the schools were only about 11% white. In 1974, the Atlanta school desegregation case was finally resolved and approved by the Fifth Circuit Court of Appeals and stability returned to Atlanta's schools. For the last seven years, the Atlanta School Board, under the leadership of Dr. Benjamin Mays has steadily improved the quality of education in Atlanta schools. By this lawsuit, Appellants would once again cause a massive upheaval in the schools of the Atlanta area, not for the purpose of obtaining quality education for black students or more black teachers and administrators, but for the sole purpose of achieving a racial balance more comparable to the racial balance of the metropolitan area as a whole. We submit that, *in the absence of a present need to remedy some substantial constitutional violation in one or more of the districts involved,* a desire to simply achieve racial balance through cross-district busing is not sufficient justification under the decisions of this Court to impose new and sweeping court-ordered busing plans on the schools of a major metropolitan area.

B. **Even assuming Appellants or their children have a constitutional right to attend racially balanced schools, the district court's findings of fact and conclusions of law that Appellants have failed to show any constitutional violations of an interdistrict nature which would require**

an interdistrict remedy are supported by ample evidence and are clearly correct.

Given the facts before it, the Supreme Court in *Milliken* dismissed the complaint against the suburban school districts, but indicated that under other more compelling circumstances, an interdistrict remedy *might* be appropriate to remedy a present denial of constitutional rights. In describing these circumstances, the Court stated:

> "Before the boundaries of separate and autonomous school districts may be set aside by consolidating the separate units for remedial purposes or by imposing a cross-district remedy, it must first be shown that there has been a constitutional violation within one district that produces a significant segregative effect in another district. Specifically, it must be shown that racially discriminatory acts of the state or local school districts, or of a single school district have been a substantial cause of interdistrict segregation. Thus an interdistrict remedy *might* be in order where the racially discriminatory acts of one or more school districts caused racial segregation in an adjacent district, or where district lines have been deliberately drawn on the basis of race. In such circumstances an interdistrict remedy would be appropriate to eliminate the interdistrict segregation *directly caused* by the constitutional violation. Conversely, without an interdistrict violation *and* interdistrict effect, there is no constitutional wrong calling for an interdistrict remedy." (Emphasis added) 418 U.S. at 744-45.

As examples of the sort of "interdistrict" violations having "interdistrict" effects which might justify some form of interdistrict relief, the Court referred to:

(a) The drawing or alteration of school district lines on a racial basis (418 U.S. at 744, 745, 748, 755),

(b) The carving out of new school districts on a racial basis (418 U.S. at 744, 755), and

(c) Arrangements whereby white children residing in the largely black city school district could attend schools in the largely white school suburban district (418 U.S. at 746-747).

There is no evidence of such interdistrict violations in this case. First, the district court expressly found that there had been no drawing, alteration or carving out of new school district lines on a racial basis. September Order, p. 7. Nor have there been any county or municipal boundary line changes having either a segregative purpose or effect. September Order, p. 7.

There is also no evidence that white students were ever bused or transferred out of the City of Atlanta school system to any of the other Appellee school districts in order to avoid desegregation. Conversely, the record shows that the effect of governmental action was clearly integrative, *i.e.*, to substantially increase the number and percentage of white students attending public schools in the Atlanta school system. For example, by far the most significant boundary line change affecting the Atlanta school district was the "Plan of Improvement" in 1952. The City of Atlanta annexed the entire northern part of the present City and a community in Southwest Atlanta from the County. The net effect of this annexation was to increase the white population of the City by seven percent, with only a negligible reduction in the percentage of the black population of Fulton County, *i.e.*, less than ⅓ of one percent. Defendants' Exhibits FL-74 (Atlanta attendance figures 1950-51 through 1953-54).

Appellants contend that historically governmental

action contributed to separation of races in education. That point is hardly in dispute. Prior to the *Brown* decision in 1954, Georgia law required separate schools for black and white children, as did the laws of all other southern states. After *Brown*, there was a period of transition during which the schools were desegregated. However, segregation in the schools during that period of time or prior to *Brown* is not at issue in this case. The district court quite properly found that once a school district has purged itself of prior segregation and become unitary, as each of the districts in this case has, such prior segregative acts should no longer be relevant. September Order, p. 26.

Moreover, the fact that some black students had to travel to Atlanta, Marietta or Decatur to attend high school during the era of state-mandated segregation did not preserve segregation in the schools. During that period of Georgia history, *all* public schools in Georgia were segregated by law, with interdistrict transfers having nothing to do with the color of the school attended by black students. Such transfers merely enabled black students living outside of Atlanta to get a high school education which they might not otherwise have received.[5]

In any event, there was similar evidence in *Milliken* of black children from the surburban districts attending schools in the City of Detroit. This Court expressly re-

---

[5] In their Jurisdictional Statement, Appellants imply that the district court found that the black community expanded within the City of Atlanta, rather than the surrounding counties, because of the location of the black high schools in the City and other governmental acts. See pp. 20, 36 (n.11), 37 of Jurisdictional Statement. This is misleading, at best. As discussed on page 9 above, the district court in no uncertain terms rejected Appellants' contention that government action had caused the concentration of the black population in Atlanta. September Order, p. 21.

jected the proposition that these type of isolated incidents could serve as the basis for interdistrict relief. 418 U.S. at 750.

Under the majority opinion written by Chief Justice Burger in *Milliken*, the district court's conclusion that Appellees had committed no constitutional violations which would justify the imposition of a massive interdistrict remedy is plainly correct. In recognition of this, Appellants structured virtually their entire case around evidence of governmental discrimination in housing, rather than schools, in reliance on language in Justice Stewart's concurring opinion in *Milliken*. However, Appellants miss the essential thrust of Justice Stewart's opinion, which was:

> "The opinion of the Court convincingly demonstrates, *ante*, at 742-743, that traditions of local control of schools, together with the difficulty of a judicially supervised restructuring of local administration of schools, render improper and inequitable such an interdistrict response to a constitutional violation found to have occurred only within a single school district." 418 U.S. at 755.

In this case, unlike *Milliken*, the district court did not find a constitutional violation in even one of the ten Appellee school systems, but expressly found that the Appellee school systems were in compliance with the Constitution. Appellants, with good reason, ignore Justice Stewart's embrace of the essential holding of *Milliken*, and instead rely on the following *dictum* from his concurring opinion:

> "This is not to say, however, that an interdistrict remedy of the sort approved by the Court of Appeals would not be proper, or even necessary, in other factual situations. Were it to be shown, for example,

> that state officials had contributed to the separation of the races by . . . purposeful, racially discriminatory use of state housing or zoning laws, then a decree calling for transfer of pupils across district lines or for restructuring of district lines might well be appropriate." 418 U.S. at 755.

In this case, Appellants contend that governmental action was a significant cause of segregated housing patterns in the Atlanta metropolitan area.[6] Most of their evidence consisted of a number of separate and isolated racially discriminatory incidents which occurred within the City of Atlanta. However, in *Milliken, supra*, Justice Stewart made it clear that evidence relating to segregative acts within the central city are irrelevant in an interdistrict case. As stated by Justice Stewart: "However, segregative acts within the city alone cannot be presumed to have produced—and no factual showing was made that they did produce—an increase in the number of Negro students *in the city as a whole*." 418 U.S. at 756, n.2.

Appellants' evidence relating to Atlanta has been described in the Statement of Facts above, and will not be repeated here. The bottom line on such evidence of discriminatory acts were that they had little, if any, effect within the City of Atlanta, *no interdistrict effect*, and in any event had ended by 1966. With regard to the rapid growth of the black population in Atlanta, the district court expressly found that such growth was not the result of governmental action. September Order, p. 21.

---

[6] Appellants contend that there was no housing evidence in the Detroit case on which Justice Stewart could rely. We note for the Court that there was extensive housing evidence introduced in the Detroit case. In fact Appellants' chief housing witness in this case, Dr. Karl Taeuber, also testified on housing patterns in Detroit, and, interestingly enough, gave almost the same opinion in *Milliken* as he did in this case. Trial Transcript, *Milliken v. Bradley, supra*, examination of Karl Taeuber, pp. 357-364.

There has also been a total failure on the part of Appellants to establish any attempts by governmental officials inside or outside of Atlanta to limit expansion of the black community to the City of Atlanta. In attempting to explain why significant black expansion occurred first in Atlanta and only later in the outlying counties, Appellants' witnesses ignored the fact that there was ample vacant land within the City of Atlanta to accommodate black expansion prior to the mid-1960's. At the time of the alleged violations in the City of Atlanta, both DeKalb and Fulton County were largely rural areas. Because of the lack of transportation to the central city and the lack of jobs in the outlying rural areas, there was no reason for there to be black expansion in those areas until such time as they had sufficient jobs and housing. These events did not occur until the 1960's and 1970's. When that occurred, so did black (and white) growth in the suburbs. Thus, the availability of jobs, not governmental action, is what caused black population growth to occur first in Atlanta, and later in Fulton and DeKalb Counties. It is difficult to imagine how the closing of a road in the City of Atlanta, the zoning of an industrial zone in the City of Atlanta, or other similar governmental action could have any impact on housing patterns outside of the City of Atlanta, particularly when Appellants' own evidence establishes that such attempts, even in the City, were completely unsuccessful. Moreover, as the district court observed, ". . . plaintiffs have not shown that any of them has sought and been denied *any* housing because of governmental discrimination." September Order, p. 21.

The record is devoid of any evidence of governmental action outside the City of Atlanta which had the necessary substantial interdistrict impact. The incidents mentioned by the district court in its findings of fact either

took place in the distant past and had no lasting impact, or were *de minimus* in nature, or were purely intradistrict in their effect.

The only housing violation which the district court deemed significant in either county were the incidents leading up to the district court's decision in *Crow v. Brown, supra,* and it specifically found that these incidents had no current effect. In *Crow v. Brown,* the district court judge held that the Fulton County Commissioners had unconstitutionally denied building permits for two public housing projects to be built outside the City of Atlanta in unincorporated Fulton County. However, the district court ordered the permits granted, and the projects were then built and opened for occupancy in 1974.

Whether the building permits were denied for improper reasons is *not* at issue in this case. The relevant issue is what effect the denial of these building permits had on the disparity between the percentage of blacks living in Atlanta and the percentage of blacks living in the rest of Fulton County. On that issue, the district court concluded that whatever impact the events of *Crow v. Brown, supra,* originally had on housing patterns were corrected when the projects were opened. September Order, p. 31. Undisputed evidence showed that over three years after they were opened, one project was only 42% occupied and the other was only 74% occupied, while at the same time there were 7,200 families, mainly black, waiting to get into public housing in the City of Atlanta. September Order, p. 18; Defendants' Exhibits Fulton 26B,29. By contrast, projects built during the same period in Atlanta were fully occupied within a short time. Defendants' Exhibit Fulton 26A,29. Rather than moving to these two outlying projects which they had a clear right to do and

which had plenty of room, these black families preferred to remain on a waiting list so they could move into public housing located in the City of Atlanta. Relying on this evidence which demonstrated an overwhelming preference and need for such housing in the City, rather than the outlying counties, the district court found that ". . . whatever impact the original violation had on residential patterns has been corrected by the opening of the two projects." September Order, p. 31.

In summary, the findings of the district court, which are supported by ample and often undisputed evidence, establishes that the events of *Crow v. Brown, supra,* have had no impact whatsoever on current residential housing patterns of Atlanta and Fulton County. Moreover, the experience with Boatrock and Red Oak, the two housing projects in *Crow v. Brown,* provides convincing empirical evidence that the construction of public housing in Atlanta where it was needed, rather than in the then rural surrounding areas, was a wise decision and did not serve to keep black citizens out of suburban areas. In 1974, the 7,200 largely black families on the waiting list of the Atlanta Housing Authority preferred to wait for public housing in the City of Atlanta rather than move into brand new public housing in more suburban areas. We submit they would have been even more reluctant to do so thirty years ago when those same suburban areas were largely rural. The plain inescapable fact is that the public housing was desperately needed in Atlanta, and that is why more was built there, and not in Fulton or DeKalb Counties.[7]

[7] Even Appellants' expert, Taeuber, acknowledged it would make no sense to build more conventional public housing in outlying Fulton County when existing projects are not fully occupied. Trial Transcript, Vol. III, p. 21.

In their Jurisdictional Statement, Appellants criticize the district court for focusing more on governmental actions during the last 10 to 20 years than on Atlanta's racial history in the 1930's, 1940's and 1950's. However, Appellants rely on isolated, anecdotal-type evidence of historical incidents with no consideration whatsoever of the lack of impact of such incidents. In order for such incidents to be relevant at all, they must have contributed to the disparity between the racial makeup of Atlanta and the surrounding counties. The plain facts of the matter are that in 1958, after most of the historical acts of discrimination alleged by Appellants took place, the Atlanta school system was only 30% black, approximately the same racial makeup as the Fulton and DeKalb County school systems today. *See Calhoun v. Cook*, 522 F.2d 717, 718 (5th Cir. 1975). Therefore, governmental acts occurring prior to 1958 had demonstrably not caused Atlanta to be a majority black school system. It has only been since then, a period during which even Appellants' witnesses acknowledge government discrimination has largely ceased, that the Atlanta school system has become 89% black. Therefore, the district court quite properly focused on the 1960's and 1970's, rather than the 1930's, 1940's and 1950's, to determine what had happened to cause this rapid increase in the black school population of Atlanta. After considering the evidence, the district court concluded that it was not the result of governmental action. September Order, pp. 21-22.

The district court was impressed with the expert testimony presented by the Appellees (September Order, p. 19), and relied heavily on it for its findings of fact that economics and personal preferences were largely responsible for Atlanta's segregated housing patterns, not governmental action.

Appellees presented three expert witnesses in the area of housing. Dr. William Clark, a professor of urban geography, testified concerning the spatial aspects of the six-county region and their importance in influencing the growth of black communities. Using detailed maps and overlays, he demonstrated that the expansion of the black community in Atlanta had proceeded in a manner consistent with what he would expect based on his observation of the expansion of black communities in other cities, given the natural and structural barriers that are peculiar to Atlanta, such as location of railroads, the central business district, industrial areas, major rivers and expensive housing, and the tendency of people to try to maintain their social and business contacts when selecting a place to live. Dr. Clark, pp. 32-43; Defendants' Maps 1-10.

As part of his testimony, Clark also showed that the black population in the suburban districts of Atlanta has increased dramatically in the last two decades, both in terms of percentage and absolute growth, contrary to Appellants' allegations that blacks have been limited to living in the City of Atlanta. Dr. Clark, pp. 26-28; Defendants' Exhibits Expert 13, 14, 15. *See also* Nov. Trial Transcript, Vol. II, p. 217.

Following Dr. Clark, Dr. Anthony Pascal, an urban economist, presented testimony showing the impact of socio-economic factors, *i.e.*, the ability of blacks to afford available housing and job locations, in causing the current housing patterns in the six-county region. Dr. Pascal, p. 11. The results of Dr. Pascal's study of the Atlanta area showed that these factors alone account for approximately three-fifths to two-thirds of the segregation currently existing in housing patterns in the six-county area. Dr.

Pascal, pp. 14-17, 22-27, 35-36; Defendants' Exhibits Expert 18, 19. His study also showed that differences in the same socio-economic characteristics between blacks and whites accounted for a substantial portion of the reason why the suburban districts were largely white and the City of Atlanta was majority black, a critical issue which Appellants' experts failed completely to address. Dr. Pascal, pp. 17-22; Defendants' Exhibits Expert 16, 17.

Pascal also presented the results of a study conducted by him which showed that the location of a majority of the public housing in Atlanta has had a minimal impact on housing patterns in the six-county region. Dr. Pascal, pp. 31-35; Defendants' Exhibit Expert 20.

Appellees' last housing expert was Dr. David Armor, a sociologist, who is an expert in the methodology and interpretation of public opinion polls surveying racial attitudes. Dr. Armor, pp. 4-10; Defendants' Exhibit Expert 6. Armor presented a summary of the various public opinion polls (including the only poll on Atlanta which Appellants' expert Taeuber ignored) which have been conducted to determine what type of neighborhoods both blacks and whites prefer. Dr. Armor, pp. 18-24; Defendants' Exhibit Expert 22. Based on these polls, Armor testified that, in his opinion, approximately 55% to 60% of the segregation that currently exists in Atlanta would still exist even if all blacks were redistributed throughout the Atlanta metropolitan area based *only on black preferences*. Dr. Armor, pp. 31-32; Defendants' Exhibits Expert 23, 24. Armor further testified that it would be extremely unreasonable to consider only the personal preferences of blacks since the personal preferences of whites are also very important. Dr. Armor, p. 29. For example, even though a black may be willing to move into a neighborhood that is 50% white, this will not result in the neighborhood re-

maining 50% white unless the whites that live in the neighborhood remain there and whites are willing to move into the neighborhoods in the same proportion as blacks. Armor's study showed that in fact whites choose not to move into neighborhoods of the type that are preferable to blacks, and in fact try to move out of such neighborhoods. Dr. Armor, pp. 23-24, 29-31; Defendants' Exhibits Expert 22, 23. Dr. Armor testified that the impact of the combination of the preferences of blacks and whites is transitional neighborhoods. That is, as blacks move into previously all-white neighborhoods, the whites move out, resulting in a rapid turnover of neighborhoods in those areas from white to black, thereby continuing the concentration of blacks in majority or all-black neighborhoods and whites in white or largely white neighborhoods. Dr. Armor, pp. 3[illegible]-36. To demonstrate empirically the effect of black and white attitudes, Armor presented a study which showed a rapid turnover in residential areas from white to black in South DeKalb County consistent with the results of the polls summarized by him in his testimony. Dr. Armor, pp. 34-36; Defendants' Exhibit Expert 25.

Based on his review of the existing polls, Dr. Armor concluded that the preferences of blacks and whites taken together account for a large proportion of the racial characteristics of housing patterns in the six-county region. Dr. Armor, pp. 32-33; Defendants' Exhibits Expert 23, 24.

In summary, the testimony of Drs. Clark, Pascal and Armor showed that the racial characteristics of housing patterns in the six-county region were largely the result of:

(1) natural and structural barriers to black expansion, including commercial and industrial areas, rivers and expensive neighborhoods, which, because of the natural

desire of people to maintain their social contacts, *i.e.*, churches, friends and business associates, influenced expansion of black neighborhoods in certain directions and not others;

(2) socio-economic factors such as the fact that blacks work in disproportionately high numbers in the City of Atlanta and the fact that on the average blacks cannot afford as expensive housing as whites; and

(3) personal preferences of blacks and whites to live in neighborhoods of differing racial composition.

Given the overwhelming importance of these factors in causing current housing patterns and their review of all of the evidence in this case, Drs. Armor, Clark and Pascal all concluded that the influence of government action, which in any event is impossible to predict with any certainty because of the lack of any empirical evidence of the impact of such actions, was minimal in causing the current housing patterns in the six-county region.

By contrast, the opinion of Appellants' experts was that economics and personal preferences played a minor role, and that governmental action was the primary factor causing segregated housing patterns.[8] Needless to say, the district court rejected their conclusions in no uncertain terms, and instead was convinced by the testimony of Appellees' expert witnesses. September Order, pp. 19-21.

[8] Since the district court failed to give their testimony any credence, we have not discussed in detail the testimony given by Appellants' experts, Drs. Karl Taeuber and Franklin Wilson. However, if the court wishes to compare their testimony with Appellees' expert witnesses, a critique of all the expert testimony relating to the housing issue is included in the Appendix to Appellees' trial brief.

CONCLUSION

For the foregoing reasons, we respectfully submit that the Order and Judgment of the district court dismissing this action was clearly correct, and can and should be affirmed without the need for further briefing on the merits or oral argument.

Respectfully submitted this _____ day of _____, 1980.

By:_____
JAMES P. GROTON

By:_____
ALFRED A. LINDSETH

Attorneys for Appellee
Fulton County Board of Education

SUTHERLAND, ASBILL & BRENNAN
3100 First National Bank Tower
Atlanta, Georgia 30303
Telephone: (404) 658-8700

By:_____
GARY M. SAMS

By:_____
CHARLES L. WEATHERLY

Attorneys for Appellee
DeKalb County Board of Education

WEEKES, CANDLER, SAMS AND WEATHERLY
450 West Court Square
Decatur, Georgia 30030
Telephone: (404) 378-2391